

## CHAPTER LXXIII.

*An Act to regulate and encourage the Drainage of Lands.*

- SECTION 1.** Incorporation of companies organized for the drainage of lands; corporate rights.
2. Declaration and copy of charter to be filed.
  3. Authority to survey and open drains; *pro rata* tax on land benefitted.
  4. Owner may construct drains on his own land; allowance therefor.
  5. Lateral drains, privilege to make by parties having paid their assessments.
  6. Authority to run drains into lakes or streams, but not to overflow or deplete, or injure.
  7. Right of way across lands, subject to compensation therefor.
  8. Right to create water-power, and dispose of same.
  9. Damages by overflowing land, to be recovered.
  10. Damages how determined.
  11. Exemplary or vindictive damages not to be allowed.
  12. Judgment to become a lien upon the company's works.
  13. Rights of company upon adjustment of damages.
  14. Prohibition to enter upon the same lands by more than one company.
  15. This Act deemed a public act, and subject to amendment.
  16. Repeal of acts inconsistent.
  17. Act takes effect on passage.

*Be it enacted by the Legislature of the State of Minnesota :*

Companies to be incorporated for drainage of land

**SECTION 1.** That any number of persons may associate themselves together for the purpose of draining lands and creating water privileges;—and they may become incorporated with rights to have perpetual succession; to sue and be sued by their corporate name; to have and use a common seal, which they may alter at pleasure; to render the interest of stockholders transferrable; to exempt the private property of its members from liability for corporate debts; to establish by-laws, and make all needful rules and regulations for the management of their affairs, and with such franchises and under such restrictions as are hereinafter set forth.

Declaration and copy of charter to be filed

**SEC. 2.** Such persons shall file in the office of the Register of Deeds of the county or counties through which their drain or conduits shall pass, a declaration, signed by all the incorporators, expressing their intention to form such a company: which declaration shall also comprise a copy of the charter proposed to be adopted by them; and they shall also, before commencing any draining operations, file with the said declaration an instrument of writing, signed by a majority of the owners or occupants of the lands through which such drains or conduits shall pass, showing and certifying the consent and grant of the right of way, given to the said company by such majority of owners and occupants;

and the said company or companies shall also publish a notice of their intention, and a description of the lands through which their drains, conduits, dams, or works, shall pass, once a week for three successive weeks in a public newspaper published in the county where their operations are to be, or if there is no newspaper published in said county, then by posting at least three notices to the same effect along the proposed line of said conduits, drains or dams.

SEC. 3. The said corporations are hereby authorized and empowered to cause such surveys and examinations to be made as may be necessary to ascertain the most advantageous route through which their drains may be conducted, and to cause estimates to be made of the probable cost thereof, and to tax and collect a *pro rata* assessment of the same on the lands to be benefitted by such improvement or drainage, but in no case shall any tax be levied on lands through which the right of way has been obtained and which said lands are not improved nor benefitted by such canal or drains; nor shall any lands be taxed at a higher or different rate than a just proportion of the entire cost of the drain or drains throughout the entire length of the same, and with reference to the section or sections passing through the same; neither shall any tax be levied or assessed by authority of this Act for any ditch, dam, culvert, race or canal wider than ten feet, nor deeper than six feet, but any such company may construct or excavate any ditch, conduit or canal to a width not exceeding twenty feet, and to such depth as they may require, and in such case the excavation and construction may only be taxed against the owners or occupants of lands through which the same shall pass, and who may be benefitted thereby, to the extent of the width and depth of such conduit, firstly herein set forth.

Authority to survey and open drains--*pro rata* tax on land benefitted

SEC. 4. It shall be lawful and competent for the owner or occupant of any lands through which said drains may pass, to construct, or aid in the excavation and construction of any section of the same passing through his or their lands, and to be credited with the same on his or their assessment, at such rate as shall be equal to the average contracts of the company, for such work, or as may be agreed upon between the parties, but all such work shall be done under the superintendence of the company, their engineer or agent, and any default on the part of the said owner, or occupant, in time or inadequacy of the work, shall authorize and empower the company to finish, alter or complete the same, as they may deem best.

Owners may construct drains--compensation

SEC. 5. The owner or owners of any lands through which said conduits shall pass, and who shall have paid their assessments thereon, shall, in all future time have the right and privilege to make lateral drains through any portion of their lands so assessed, and to lead and conduct the same into the main conduit, but no other person or persons shall have such right without the consent of the company.

Lateral drains--privilege to make

Extension of  
drains into lakes  
or streams

SEC. 6. It shall be competent for any such company to lead or construct their said conduits, canals or drains, from or into any lake, brook, stream or water course ; but this section shall not be so construed as to authorize any company to deplete, empty or overflow any lake, brook or stream, to the injury or damage of any person, or persons, without their consent, and no drain made by any such company shall be allowed to overflow, or run out upon any lands to their damage ; but all such drains, conduits, races or canals shall be conveyed to a running stream, lake, river, or other absorbing conduit, and every such company shall be responsible for any violation of this Section to the parties injured thereby, the damages to be assessed in the manner herein-after set forth.

Right of way  
across lands—cor-  
poration

SEC. 7. Any such corporation or company, shall have the right of way across all lands, not being in an incorporated town or village, whenever a majority of the owners of such lands have consented to the same, and said companies may appropriate to their own use and control for the purposes of their drains, or appurtenances, such width of tract throughout its entire length not exceeding thirty feet, as the said company shall absolutely require for the purposes and objects of their incorporation, subject however, to the payment of such compensation as the companies may agree to pay therefor, or as shall be ascertained in the manner hereinafter directed and provided, and the said companies shall have the right to cross public roads, highways, streams or other water-courses, *Provided*, That at such crossings the said company or companies, shall restore said road, highway, stream or water-course so disturbed, to its former state, or in a manner not to impair their usefulness to the person, or persons occupying, or to the public.

Right to create  
water powers

SEC. 8. It shall be lawful for any such company to raise or save the water running through said drains, canals or conduits, by a dam or dams, at such places as they shall deem expedient, and to make use of such water for propelling any kind of machinery, or for any other purpose, and to sell or lease the right to use such water, or any part thereof, to any person or persons whomsoever.

Damages for over-  
flowing lands

SEC. 9. In case the raising of the waters by means of the dams aforesaid, shall damage any land not owned by the company, and without the consent of the owner or owners thereof, or in case the right of way shall be taken by such companies across any field or lands without the consent of the owner or owners, to his or their detriment, or damage, or in case any stream, lake, marsh or lands, shall be depleted, emptied, or overflowed, to the injury or damage of any person or persons, without their consent, by the operations, act, or acts of any such company, then and in all such cases, the owner or owners of any such lands so injured or damaged, shall recover from such company, just compensation for all

damages occasioned by the passage of such drains or conduits through their lands, or by the depletion, emptying or overflowing of such lake, stream, marsh, or lands, or by raising of the waters as aforesaid, and by maintaining such conduits and dams forever.

Sec. 10. Such damages shall be determined by the verdict of a jury in an action brought in any Court of record having jurisdiction of civil action, and at the request of either party the jury shall take a view of the premises, under order of the Court. Damages—how determined

Sec. 11. In such action no exemplary or vindictive damages shall be allowed, but if judgment shall be rendered for the plaintiff, the Court shall have power in its discretion to award to the plaintiff, extra cost in addition to the costs ordinarily taxable, but not exceeding in all, double the amount of ordinary costs. Exemplary damages not to be allowed

Sec. 12. Judgment shall be rendered and execution issued in such action, as in ordinary actions for injuries to real estate, and such judgment, from the time of docketing the same, shall become a lien upon the dam, or dams, of the company, the mills furnished with water thereby, and their rights and privileges in such water power, by whomsoever the same may be owned or possessed. Judgments to become a lien upon company's works

Sec. 13. Upon payment and discharge of any such judgment, the said company or companies, or their assigns (as against the party recovering such judgment, his heirs and assigns) shall enjoy forever the right to keep up and maintain the conduit, dam or dams, respecting which such judgment was rendered, and the remedy provided by this Act for any such injuries to lands, or rights as are herein mentioned, shall be exclusive of all other remedies of whatever nature. Rights of companies

Sec. 14. After the performance by any company or association of persons of the condition prescribed in Section 2, it shall not be lawful for any other company or association of persons, to enter in any manner whatever upon the same lands for draining purposes, nor to tap or break into any conduit constructed by the first company, nor to drain any lake, stream, or marsh, drained or to be drained by the said first company, unless a default shall occur, or remain by the neglect or failure of the said company to commence their operations within one year from the filing of their declaration in the office of the Register of Deeds, as specified in Section two (2) of this Act, or a subsequent default in the failure of the said first company to complete their undertaking, as specified in their published declaration of intention, within five years from the date of such publication, but this Section shall not be construed so as to prevent any owner of lands throughout such tract, to drain his own lands meanwhile in such manner as he may have otherwise legally done. Prohibition to other companies to enter upon same lands

Sec. 15. This Act is hereby declared to be a public and general Act, and may be amended by any subsequent Legis- Declared a public act

lature in any manner not destroying or impairing vested rights.

SEC. 16. All acts and parts of acts contravening the provisions of this Act are hereby repealed.

SEC. 17. This Act shall take effect and be in force from and after its passage.

GEORGE BRADLEY,  
Speaker of the House of Representatives.  
WILLIAM HOLCOMBE,  
President of the Senate.

APPROVED—August third, one thousand eight hundred and fifty-eight.

HENRY H. SIBLEY.

SECRETARY'S OFFICE, Minnesota, }  
August 3, 1858.

I hereby certify the foregoing to be a true copy of the original on file in this office.

FRANCIS BAASEN, Secretary of State.

## CHAPTER LXXIV.

### *An Act to regulate the Traffic in Spirituous Liquors.*

- SECTION 1. Boards of Supervisors authorized to grant licenses to vend liquors.
2. License for selling intoxicating liquors—License for selling malt liquors—Bonds to be given.
3. Licenses to expire on 1st of January yearly.
4. Violation of conditions of bond—Suit to be brought.
5. Revocation of license at any time—Penalty for violation of bond.
6. Selling liquor without license, penalty, and mode of recovering.
7. Peace officers, their duty to prosecute all violations of this Act.
8. Penalty for non-performance of the duties specified.
9. Supervisors individually liable for damages when bond is proved to be of no value.
10. List of licensed persons to be delivered to the Grand Jury.
11. Duty of Grand Jury to return bills of indictments for violations of this Act.
12. Justices of Peace to have concurrent jurisdiction with District Court in suits upon bonds.
13. Provides for jury trial and appeal, if requested.
14. Right of municipal townships to decide against licenses by vote of the people.
15. Repeal of former acts, except such as relate to traffic with Indians.
16. Act takes effect on the first of September, 1858.

*Be it enacted by the Legislature of the State of Minnesota:*

SECTION 1. That the Board of Supervisors in the several